

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MAY 23 2013

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

KENT FARMER, as an individual and as a
representative of the putative class,

Plaintiff,

v.

BANK OF AMERICA, N.A. and BAC
HOME LOANS SERVICING, L.P.,

Defendants.

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CIVIL NO. 5:11-CV-00935-OLG

**ORDER PRELIMINARILY APPROVING SETTLEMENT, CONDITIONALLY
CERTIFYING CLASS FOR SETTLEMENT PURPOSES, AND WITH RESPECT TO
NOTICE, FINAL APPROVAL HEARING AND ADMINISTRATION**

Upon review and consideration of the Settlement Agreement dated April 19, 2013 (the “Agreement”) in the above-captioned case (the “Action”), and as a hearing on the proposed settlement described in the Agreement is necessary;

NOW, upon the application of the Parties, after a hearing held on May 23, 2013, and good cause appearing, THIS COURT FINDS and ORDERS as follows:

1. The terms of the Agreement, and the Settlement provided for therein, are preliminarily approved as fair, reasonable and adequate, subject to further consideration thereof at the Final Approval Hearing described in paragraph 17 of this Order.

2. The definitions set forth in the Agreement are hereby incorporated by reference into this Order.

3. Solely for the purpose of settlement, in accordance with the Agreement and pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, this Court hereby certifies the following Class:

All mortgagors whose mortgages were secured by real property in Texas to whom Bank of America sent a letter requesting proof of hazard insurance after May 13, 2007 and whose deeds of trust contain either of the following provisions:

INSURANCE. Notwithstanding any language to the contrary in this Homestead Lien Contract or in any Related Document, if this Homestead Lien Contract secures an extension of credit pursuant to Section 50(a)(6), Article XVI Texas Constitution, Lender does not require fire insurance with standard extended coverage endorsements on the property.

or

Except insurance against floods and flooding, Bank of America does not require Grantor to maintain insurance on the Property against loss by fire, hazards included within the term "extended coverage" and any other hazards.

4. Pursuant to the Agreement, and for settlement purposes only, the Court finds as to the Class that:

- a. The Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to the Class;
- c. The claims of Representative Plaintiff are typical of the claims of the Class that Representative Plaintiff seeks to certify;
- d. Representative Plaintiff and Plaintiff's Counsel will fairly and adequately protect the interests of the Class;
- e. The questions of law or fact common to members of the Class, and which are relevant for settlement purposes, predominate over the questions affecting only individual members; and
- f. Certification of the Class is superior to other available methods for fair and efficient adjudication of the controversy.

5. For the purpose of this preliminary approval and all matters relating to the Settlement and this Action, until further order of the Court, Kent Farmer shall be Representative

Plaintiff of the Class and the following lawyers and law firm are appointed as counsel for the Class ("Class Counsel"):

NICHOLS KASTER, PLLP
E. Michelle Drake
Anna Prakash
4600 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

6. Pursuant to the terms of Section 4.07 of the Settlement Agreement, Bank of America is hereby directed to prepare and provide to Class Counsel and the Settlement Administrator a Class Member List within forty-five (45) days of the entry of this Order. Within sixty (60) days of the entry of this Order, pursuant to the procedures detailed in the Agreement, the Settlement Administrator will provide notice of this Settlement and the Final Approval Hearing to all Class Members by mailing a copy of the Notice of Pendency of Class Action, Proposed Settlement and Hearing ("Class Notice"), substantially in the form attached to the Agreement as Exhibit 1.

7. The reasonable costs and expenses of printing, preparing and mailing the Class Notice and the reasonable costs and expenses of the Settlement Administrator, and other related administration expenses shall be paid from the Settlement Fund as set forth in Section 5.06 of the Agreement.

8. Prior to the Final Approval Hearing, described in paragraph 17 herein, Class Counsel shall serve and file a sworn statement of the Settlement Administrator evidencing compliance with the provisions of this Order concerning the mailing of the Class Notice.

9. Class Notice in compliance with the provisions set forth in paragraph 6 above and the Settlement Agreement is hereby found to be the best notice practicable under the circumstances, and constitutes due and sufficient notice of this Order to all persons affected by

and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and Due Process.

10. Any Class Member wishing exclusion from the Class shall mail a request for exclusion ("Request for Exclusion" or "Opt-Out Form"), described in Section 4.13 of the Settlement Agreement, addressed to the Settlement Administrator and postmarked no later than September 6, 2013. Such request shall set forth: the name, address, mortgage loan number, and telephone number of the Class Member, and contain the words "opt out," "exclusion," or other words clearly indicating an intent not to participate in the Settlement. If more than one person was obligated on the loan, then the opt-out request must be signed by all obligors to be valid. Requests for exclusion shall be deemed to have been made in each and every capacity in which the person requesting the exclusion is acting. Any Class Member who does not properly and timely request exclusion shall be included in the Class and shall be bound by any Final Judgment entered in this Action.

11. Any Participating Class Member wishing to object to the settlement must submit an objection in the form prescribed by Sections 4.16 and 4.17 of the Settlement Agreement. All objections must be filed with the Clerk of Court, and mailed to Class Counsel and Counsel for Bank of America, on or before September 6, 2013. Any Class Member who intends to appear personally (or through separate counsel if a timely and proper Entry of Appearance is filed) to object to the Settlement on any grounds whatsoever must file with the Clerk of the Court a Notice of Intention to Appear. The Notice of Intention to Appear must be filed (or, if mailed, postmarked) on or before September 6, 2013.

12. Within five (5) business days following the receipt of any request for exclusion, the Settlement Administrator shall notify in writing Bank of America's Counsel and Class

Counsel regarding the names of the Class Members, if any, who request exclusion, and the mortgage loan numbers (if available) for which each is claiming exclusion and shall provide copies of all Requests for Exclusion received by it to Bank of America's Counsel and Class Counsel. Within ten (10) days of the last date for requesting exclusion ("Exclusion Date") the Settlement Administrator shall provide the parties with a sworn statement listing all persons who have submitted timely requests for exclusion and Plaintiff shall file the same with the Court as part of his motion for Final Settlement Approval. The originals of all Requests for Exclusion shall be retained by the Settlement Administrator (i) unless and until such originals are filed with the Court or (ii) until such originals are delivered to Bank of America's Counsel following the Final Approval Date.

13. To effectuate the Settlement and the Notice provided for herein, the Settlement Administrator shall lease and maintain a post office box of adequate size. The Notice to the Class shall designate said post office box for all purposes of communicating with the Settlement Administrator. The Notice to the Class shall designate the Settlement Administrator as the person to whom Requests for Exclusion shall be sent. The Settlement Administrator shall be responsible for the receipt of all responses from Class Members and shall preserve all Requests for Exclusion and any and all other written communications from Class Members or any other person in response to said notice until administration is complete or pursuant to Order of the Court. All written communications received from Class Members and all written responses to inquiries by Class Members relating to the Agreement and Settlement shall be available at all reasonable times for inspection and copying by Bank of America's Counsel and Class Counsel, subject to further order of the Court if issues of privilege or confidentiality arise.

14. In order to be deemed a Class Member, as set forth in the Agreement, in the event the Settlement is effected in accordance with all of the terms and conditions thereof, Class Members need not take any affirmative action to be included in the Settlement, but if desirous of participating in the Settlement, shall not opt out of, or request exclusion from, the Settlement. Nevertheless, pursuant to the terms of the Settlement Agreement, certain Class Members may need to submit an election to cancel or a claim form to receive certain benefits.

15. All other events contemplated under the Settlement Agreement to occur after this Order and before the Final Approval Hearing described in paragraph 17 shall be governed by the Settlement Agreement, to the extent not inconsistent herewith.

16. Memoranda in support of Final Approval of the Settlement and any petitions for attorneys' fees and a Named Plaintiff Case Contribution Award shall be filed with the Clerk of the Court on or before October 4, 2013.

17. A hearing (the "Final Approval Hearing") shall be held before the undersigned at 9:30 a.m. on October 11, 2013 in the United States District Court for the Western District of Texas, 655 E. Cesar E. Chavez Blvd., San Antonio, TX 78206 to consider the fairness, reasonableness and adequacy of the proposed Settlement, the entry of any final order or judgment in the Action, any petition for attorneys' fees and participation award, and other related matters. This hearing may be postponed, adjourned or continued by Order of the Court without further notice to the Class.

18. Any Class Member who does not opt out of the Settlement may appear at the Final Approval Hearing in person or by counsel, if an appearance is filed and served as provided in the Notice, and will be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy of the proposed Settlement, and/or the requested

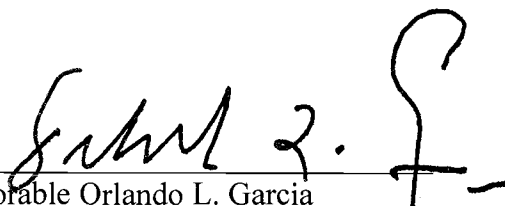
award of attorneys' fees and participation awards; provided, however, that no person shall be heard in opposition to the proposed Settlement and, if approved, the judgment entered hereon, or to the requested award of attorneys' fees and participation awards, and no papers or briefs submitted by any person shall be accepted or considered by the Court unless, on or before fourteen (14) days prior to the hearing (September 27, 2013) such person (i) has filed with the Clerk of the Court a notice of such person's intention to appear together with a statement that indicates the basis for such opposition along with any supporting documentation, and (ii) has served copies of such notice, statement, and documentation together with copies of any other papers or briefs that such person files with the Court, either in person or by mail, upon Class Counsel, and upon Bank of America's Counsel, and (iii) otherwise complies with the Settlement Agreement and Notice for purpose of such hearing.

19. All proceedings in the Action other than such as may be necessary to carry out the terms and conditions in the Agreement or the responsibilities related or incidental thereto are stayed and suspended until further order of this Court.

20. If final approval of the Settlement is not achieved, or if the Settlement is terminated for any reason whatsoever, the Settlement and all proceedings had in connection therewith shall be without prejudice to the *status quo ante* rights of the Parties to the Action, and all Orders issued pursuant to the Settlement shall be vacated. In such an event, the Settlement and all negotiations concerning it shall not be used or referred to for any purpose whatsoever.

21. Garden City Group, 1985 Marcus Avenue, Lake Success, New York 11042, is hereby appointed to serve as Settlement Administrator.

Dated: May 23, 2013


Honorable Orlando L. Garcia
United States District Judge